

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

**SARA M. LAMBERT SMITH
and SCOTT SMITH, her husband,**

Plaintiffs,

v.

**Civil Action No. 5:14-cv-30075
Honorable _____, Judge**

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

1. Plaintiffs, Sara M. Lambert Smith and Scott Smith, her husband, are citizens of the State of West Virginia with permanent residency in Herndon, Wyoming County, West Virginia.

2. The Defendant the United States of America, through the U.S. Department of Health and Human Services, at all times alleged herein is the federal governing body responsible for controlling, supervising and managing the business affairs of its public health care provider, Community Health Systems, Inc. d/b/a Access Health Associates in OB/GYN. Included within the duties and responsibilities of the U.S. Department of Health and Human Services is the oversight and supervision of its employee/agent physicians, employees/agent nurse midwife and other health care providers at Community Health Systems, Inc. d/b/a Access Health Associates in OB/GYN, specifically including, but not limited to Dr. Roy Wolfe. (hereinafter referred to as "Access Health").

3. The Federal Tort Claims Act, 28 U.S.C.S. § 1346(b) and §§ 2671-2680

provides that any action for medical malpractice against Public Health Service employees may be filed against the United States of America once all administrative remedies have been exhausted.

4. On June 12, 2014, the Plaintiffs Sara M. Lambert Smith and Scott Smith submitted their Claim for Damage, Injury or Death to the U.S. Department of Health and Human Services, which is attached hereto as Exhibit 1.

5. On or about October 21, 2014, Plaintiffs received a letter from the Department of Health and Human Services denying their claim, which is attached as Exhibit 2.

6. Plaintiffs have complied with the filing requirements set forth in West Virginia Code §55-7B-6.

7. On December 18, 2013, Sara M. Lambert Smith, then 24 years old, underwent a primary low segment transverse cesarean section performed by Dr. Michael Webb, an employee of Access Health. In his operative report, Dr. Webb indicated that the placenta “seemed abnormally adherent.”

8. On December 25, 2013, Sara M. Lambert Smith presented to the Emergency Room at Raleigh General Hospital with complaints of a sudden onset of heavy vaginal bleeding and syncope. An ultrasound obtained in the ER was suggestive of possible retained products of conception.

9. Sara M. Lambert Smith was then taken to the Operating Room and underwent a dilation and curettage (D&C) performed by Dr. Roy Wolfe, an employee/agent of Access Health. The D&C was unsuccessful in stopping the bleeding. Dr. Wolfe then proceeded directly to a hysterectomy.

10. Dr. Wolfe and Access Health failed to properly manage Sara M. Lambert Smith's condition when she presented on December 25, 2013.

11. Dr. Wolfe and employees or agents of Access Health performed a hysterectomy, without considering alternative procedures for Sara M. Lambert Smith, a 24 year old female who desired further children.

12. As a result of the failure by Dr. Roy Wolfe and other agents or employees of Access Health to properly manage Sara Lambert Smith's condition and to consider and/or attempt alternative procedures prior to a hysterectomy, Sara M. Lambert Smith suffered a permanent injury and is no longer able to conceive and bear other children, as well as other permanent consequences.

13. Access Health's agents or employees, including Dr. Roy Wolfe, were negligent and practiced below the applicable standards of care in the medical treatment and care provided to Sara M. Lambert Smith as aforesaid and are guilty of medical malpractice and negligence in their care, and lack of care and treatment of Sara M. Lambert Smith. The treatment and/or lack of treatment provided by Dr. Roy Wolfe and other agents or employees of Access Health, as outlined herein, was negligent and below the standard of care that an ordinary prudent physician or other health care provider would have exercised under like or similar circumstances. The treatment and/or lack of treatment, provided by employees or agents of Access Health, as outlined herein, resulted in Sara M. Lambert Smith's permanent injuries, and also resulted in the loss of a chance of her uterus being spared and the ability to have further children.

14. The United States of America is liable for the negligence of its respective public health service employees who were the employees or agents of Access Health referenced herein.

15. As a direct and proximate result of the negligence, carelessness, recklessness, incompetent management, willful lack of care, and deviation from the normal standard of medical care of the agents or employees of Access Health as stated herein, and others, Plaintiff Sara M. Lambert Smith has suffered and will continue to suffer a significant and life altering permanent bodily injury, including, but not limited to the loss of her uterus and the ability to bear children; has incurred medical expenses in the past, and may do so in the future; has endured significant pain and suffering, has endured mental anguish, both in the past and will do so in the future; has sustained an impairment of her ability to enjoy life, and will continue to do so in the future; and has suffered aggravation, annoyance, and inconvenience, and will do so in the future and therefore, seeks all damages allowed by law.

16. As a further direct and proximate result of the negligent acts of the agents or employees of Access Health as stated herein, and others, Plaintiff Scott Smith has been deprived of the consortium, society and comfort of his wife, Sara M. Lambert Smith, including, but not limited to their inability to have additional children, and has also suffered and will continue to suffer mental anguish, which would not have occurred, but for the aforesaid injuries.

PLAINTIFFS DEMAND A TRIAL BY JURY.

SARA M. LAMBERT SMITH and
SCOTT SMITH, her husband,

By Counsel

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